P.R. No. 1774/06
Presented by Shri V. R. Goneem Adv.
dated 26/06/06

Single Bench

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

CHHATTISGARH

CIVIL REVISION NO. 89 /2006

APPLICANT : Jagannath, S/o. Dirjo, Aged about 70 yrs,
NON- APPELLANT NO. 1
Cast – Kolta, R/o. Village -Khairkhunta, Tahsil and District - Mahasamund (CG)

VERSUS

RESPONDENTS: 1] Dalmo Bai W/o. Shridhar Sahu, Aged about 68 years, Cast – Kolta, R/o. Village - Jarabharan, Tahsil and District - Mahasamund (CG)

----------**APPELLANT**

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2] State of Chhattisgarh, Through: Collector Mahasamund, District- Mahasamund (CG)

----------**NON-APPELLANT NO. 2**

CIVIL REVISION UNDER SECTION 115 OF CODE OF CIVIL PROCEDURE

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A.F.R.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

(26)

मामला क्रमांक C.R.No. 89 / सन् 2006

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	10-11-2006 Applicant **Jagannath** by Shri Manoj Paranjpe, learned counsel with Shri Vaibhav Goverdhan, Advocate. Respondent No.1 by Shri Sunil Sahu, Advocate. State/Respondent No.2 by Shri Akhil Agrawal, Panel Lawyer. At the request of learned counsel for the parties, this Civil Revision is being disposed of finally today at the stage of admission. Brief facts are that the applicant/plaintiff Jagannath had instituted Civil Suit No.31-A/2003 against Dalmo Bai and the State of Chhattisgarh for declaration and permanent injunction. In the said Civil Suit, the respondent/defendant Dalmo Bai was appearing through Counsel. According to the applicant on 05-11-2003 the aforesaid Civil Suit was fixed for recording plaintiff's evidence. The defendant/respondent Dalmo Bai did not appear in person on 05-11-2003 but was represented by her counsel who pleaded no instructions. Consequently, the Ist Civil Judge Class-I, Mahasamund proceeded ex-parte against the respondent/defendant Dalmo Bai and ex-parte judgment and decree was passed on 18-11-2003 against Dalmo Bai. On 25-03-2004, Dalmo Bai preferred an application under Order-9 Rule-13 C.P.C. for setting aside the	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —2—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

ex-parte judgment and decree on the ground that she had executed a power of attorney in favour of her husband Sridhar who was appearing on her behalf in the Civil Suit. Sridhar was ill due to Malaria from 31-10-2003 till 20-03-2004. The plaintiff/applicant herein contested the aforesaid application. Vide order dated 23-12-2004, the Ist Civil Judge Class-I, Mahasamund dismissed the application under Order 9 Rule-13 C.P.C. holding that there was no sufficient cause for non-appearance of the appellant Dalmo Bai on 05-11-2003. Dalmo Bai preferred a Miscellaneous Civil Appeal No.01/2005 against the said order. Vide order dated 10-05-2006, the Ist Additional District Judge, Mahasamund allowed the appeal on the grounds that Dalmo Bai was an old lady aged 68 years and considering the ground of illness of her husband on the date of hearing and also the principles of natural justice an opportunity of hearing ought to be granted to the defendant in the Civil Suit No.31-A/2003. Consequently, the Miscellaneous Civil Appeal No.01/2005 was allowed subject to payment of cost Rs.1,000/- by the defendant to the present applicant/plaintiff.

Shri Vaibhav Goverdhan, learned counsel appearing for the applicant has contended that Dalmo Bai did not file any medical certificate relating to illness of her husband Sridhar on the date

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —3—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of hearing i.e. on 05-11-2003. It was also contended that the power of attorney alleged to have been given by Dalmo Bai in favour of her husband on 24-09-1991 did not inspire confidence. In sum and substance it was urged that Dalmo Bai had failed to show sufficient cause for non-appearance on 05-11-2003. On the other hand, Shri Sunil Sahu, learned counsel appearing for the respondent No.1/Defendant Dalmo Bai urged that considering the age of Dalmo Bai, the fact that her counsel did appear before the Court on the date of hearing, the defendant should not be penalized for the act of counsel who pleaded no instructions on her behalf. It was also urged that provision contained in Order-9 Rule-13 of C.P.C. should be liberally construed so as to advance substantial justice.

Having considered rival submissions, I have perused the record. It is not disputed that the counsel appointed by the defendant did appear before the Ist Civil Judge Class-I, Mahasamund on the date of hearing i.e. on 05-11-2003. Para-1 of the Civil Revision also shows that on 05-11-2003 the Civil Suit was fixed for recording the plaintiff's evidence.

In M.K.Prasad Versus P. Arumugam reported in 2002 (I) L.S.C.T. 2 it was held by the Apex Court that " while deciding the

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application for setting aside the ex-parte decree, the Court should keep in mind the judgment impugned, the extent of the property involved, and the stake of the parties."

Applying the above principle, while rejecting the application under Order-9 Rule-13 C.P.C. the Ist Civil Judge Class-I, Mahasamund overlooked the judgment impugned, the extent of property involved, the undisturbed possession of Dalmo Bai over her share of suit lands and the prolonged earlier litigation and also the stake between the parties. It is well settled that the word "sufficient cause" used in Order-9 Rule-13 C.P.C. should be interpreted liberally as to advance substantial justice and not to thwart it.

The impugned order clearly shows that the testimony of Dalmo Bai that her husband who was looking after the case on the basis of a power of attorney executed by her was ill during a period of 4-5 months from 31-10-2003 is wholly unrebutted. It was also observed that Dalmo Bai was in possession of ½ share of the suit lands and the application filed by the plaintiff for restraining Dalmo Bai by issuance of a temporary injunction had been dismissed.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित — 5 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Considering the above fact situation and also the fact that the defendant was an old and illiterate lady aged 68 years and was being represented by counsel on each hearing and also the fact that her counsel did appear before the Court on 05-11-2003 and all of a sudden pleaded no instructions for reasons best known to him, I am of the considered opinion that the impugned order dated 10-05-2006 is in conformity with the well settled principles of natural justice. There is nothing to indicate that the learned Ist Additional District Judge, Mahasamund had acted illegally or committed any material irregularity.

In this view of the matter, this Civil Revision No.89/2006 being devoid of merit is dismissed at the stage of admission.

In view of the above, M.(C.)P.No.1040/2006 for grant of stay also stands disposed of.

Certified copy as per rules.

Sd/-
Dilip Raosaheb Deshmukh
Judge

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